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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,927	07/10/2003	Dennis M. Brown	A-71604/RFT/THR (468899-3)	3972
7590 11/17/2005			EXAMINER	
Traci H. Ropp for Richard F. Trecartin Dorsey & Whitney LLP Intellectual Property Department Four Embarcadero Center, Suite 3400 San Francisco, CA 94111-4187			LILLING, HERBERT J.	
			ART UNIT	PAPER NUMBER
			1651	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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1. Receipt is acknowledged of the prior art information disclosure statement filed September 07, 2004.

2. Claims 1-28 are pending in this application.

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to a process for producing homoharringtonine, classified in class 424, subclass 725.
- II. Claims 12-14 and 18, drawn to a composition comprising homoharringtonine, classified in class 540, subclass 576.
- III. Claims 15-16, drawn to a method of treatment comprising administering composition comprising homoharringtonine, classified in Class 514, subclass 214.03.
- IV. Claims 19-24, drawn to an aqueous solution of HHT, classified in Class 514, subclass 214.03.
- V. Claim 25, drawn to a method of treatment of a host with an aberrant cellular condition comprising administering a cephalotaxine, classified in Class 514, subclass 214.01.

Claims 25-28 will be examined with this Invention.

The inventions are distinct, each from the other because:

Inventions I and II/IV are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the

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process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process.

4. Inventions II/IV and III/V are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the product as claimed can be used in a materially different product of using that product.

Invention V does not require the specifics of Inventions I, II, III or IV.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, have acquired a separate status in the art because of their recognized divergent subject matter and the search required for one invention is not required for the other invention, thusly the restriction for examination purposes as indicated is proper.

In addition, the search and examination for the multiple inventions would be an extreme burden since each of the inventions require a different computerized search in addition to a search and examination in different classes.

6. In accordance with this Tech Center procedure for restrictions pertaining to Ochiai/Brouwer Rejoinder Policy, the following guidelines will govern:

This examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of MPEP § 821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product** will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier. Amendments submitted after final rejection are governed by 37 CFR 1.116; amendments submitted after allowance are governed by 37 CFR 1.312.

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In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103, and 112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. § 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.**

Further, note that the prohibition against double patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

7. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Examiner Lilling whose telephone number is 571-272-0918 and Fax Number is (703) 872-9306** or SPE Michael Wityshyn whose telephone number is 571-272-0926. Examiner can be reached Monday-Thursday from about 5:30 A.M. to about 3:00 P.M. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

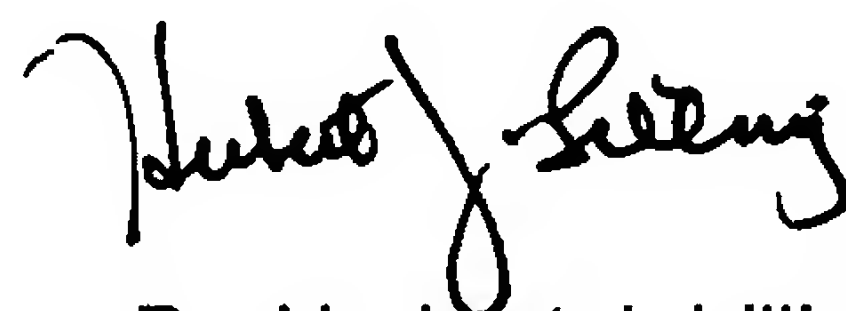
Information regarding the status of an application may be obtained from the Patent Application information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://portal.uspto.gov/external/portal/pair>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

H.J.Lilling: HJL

(571) 272-0918

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November 14, 2005



Dr. Herbert J. Lilling

Primary Examiner

Group 1600 Art Unit 1651